



IAC-FH-CK-V1

**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: AA/06120/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 24<sup>th</sup> June 2015**

**Decision & Reasons Promulgated  
On 17<sup>th</sup> August 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MISS BK  
(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Ms A Fijiwala, Home Office Presenting Officer

For the Respondent: Ms F Clarke, Counsel instructed by Fadiga & Co

**DECISION AND REASONS**

1. The application for permission to appeal was made by the respondent but nonetheless I shall refer to the parties as they were described before the First-tier Tribunal, that is Miss BK as the appellant and the Secretary of State as the respondent.

**The Appellant**

2. The appellant is a citizen of Albania born on 16<sup>th</sup> March 1987 and she arrived in the UK in November 2012. She claimed asylum on 11<sup>th</sup> December 2013 and was served with an IS.151A as it was considered that she had entered the country illegally.
3. The appellant had fled her family home in June 2012, because she claims she was to be forced to marry, with her boyfriend Edi and went to a hotel in Elbasab. She stayed in the hotel for a week and then left Albania on 17<sup>th</sup> or 18<sup>th</sup> June 2012 and flew to Italy with Edi. She then went to France and stayed in Paris with people she believed to be Romanian. She was put in a car and sent to England whereupon the car was stopped by the police but she was released.
4. On 9<sup>th</sup> September 2013 a referral was made on her behalf to the national referral mechanism for a competent authority to make a decision as to whether she was a victim of trafficking as established by the Council of Europe Convention on Action against Trafficking in Human Beings.
5. On 31<sup>st</sup> July 2014 it was determined that the appellant was considered to be a victim of trafficking and granted twelve months' discretionary leave, owing to her personal circumstances, until 1<sup>st</sup> August 2015.
6. Nonetheless a description of the Romanian protective legislation and assistance to victims of trafficking in Romania was set out in the reasons for refusal letter dated 8<sup>th</sup> August 2014 and the respondent declined to grant the appellant asylum, humanitarian protection or protection under the European Convention. When the appellant's claim for international protection was refused the respondent noted that she had a daughter, MK, born in England on 28<sup>th</sup> October 2013.
7. The appellant appealed further to Section 83(2) of the Nationality Immigration and Asylum Act 2002. This is appeal is restricted.
8. The appellant's appeal was heard by Judge McIntosh on 22<sup>nd</sup> December 2014 who set out the following:
  - "22. In reaching my decision I have taken into account the evidence presented in the appeal file the oral evidence of the appellant, the respective submissions of the representatives and the skeleton argument of Miss Clarke.
  23. It is the respondent's case that the appellant does not meet the criteria, that the appellant can relocate to southern Albania and that the appellant comes from a financially, stable family with liberal views in a modern society.
  24. The appellant was educated to the age of 18 and was able to visit friends without the need to be chaperoned by a male member of her family. It is argued that in those circumstances the appellant could return to her family, failing that she would have the means to relocate to southern Albania and re-establish life there.
  25. There is evidence both from the expert report and the Country Guidance Information, of the conservative views held by Albanian society. Whilst I appreciate the information of the moves to educate the police, judges and

those likely to review returnees; this does not extend to the views of society as a whole. I find that the consensus is that there is a real risk of the appellant being the subject of ill-treatment from her family and society in general.

26. I have taken into account the fact that the appellant may seek to disguise the fact of her history as the victim of trafficking, the fact remains that the appellant is a single female with a dependent child. This in itself will attract (*sic*) negative attention from society at large. It is difficult to be certain that the appellant would be ostracised by her family but there remains a real risk.
  27. It is the appellant's case that she disobeyed her father choosing not to marry the man of his choice. I find from the evidence that there is an element of a liberal approach from the appellant's family. The appellant and other siblings were educated to the age of 18, however there appeared to be a retention of older values including arranged marriages for the females in the family. I found the account of the appellant's family background to be credible and consistent. I found less consistent the account given in relation to the travel arrangements made with Edi. The fact that the appellant was prepared to travel to the United Kingdom in the boot of a car, and although apprehended on that occasion, agreed to travel to England separately from Edi on a second occasion.
  28. The pivotal consideration to the appellant's asylum claim is the likely treatment of the appellant on her return to Albania. I have had regard to the report from Maranda Vickers, the Country Guidance Information and the decision of AM and BM I also have regard to the personal circumstances of the appellant who would have a dependent child to be returned to Albania with her. The appellant would be responsible for supporting herself and her child. I find from the material before me, that there is a real risk that upon return the appellant would be left without support and left vulnerable with a risk of exploitation. There is also a risk to her child if she cannot be cared for by the appellant.
  29. I find there is no evidence of the state providing support for the appellant and her dependent child. Whilst the risks to the appellant and her child may not amount to a well-founded fear of persecution, I find that there are sufficient grounds that upon return the appellant and her child, may face serious harm for which there is insufficient state protection from the views by that society in general. I find there are grounds for Humanitarian Protection for the appellant to succeed on appeal.
  30. I have also considered the appellant's appeal in accordance with the appellant's right to private and family life pursuant to Article 8 ECHR.
  31. I also have regard to the need to consider the best interest of the child under Section 55 of Border Control and Immigration Act 2009."
9. The judge proceeded to reject that the risks to the appellant and her child may amount to a well-founded fear of persecution and apparently dismissed the appeal on the basis of the asylum claim.
  10. Judge McIntosh, however, allowed the appeal on the basis of humanitarian protection and the European Convention.

11. An application for permission to appeal was made by the respondent on the basis that the judge had erred in allowing the appellant's appeal on non-asylum grounds as her right of appeal was restricted under Section 83(2) of the Nationality Immigration and Asylum Act 2002.
12. It was also asserted that the judge had erred in finding that there was "no evidence before the court of the state providing support for the appellant and her dependent child" (29). Thus the judge failed to have regard to the country guidance **AM and BM (Trafficked women) Albania CG** [2010] UKUT 80 (IAC).
13. On submissions from Ms Fijiwala and with regards the error of law stage, I can accept that the judge erred in law in relation to the application of Section 83(2) of the Nationality, Immigration and Asylum Act. The judge appeared to dismiss the appeal on asylum grounds which was the only grounds of appeal open and available to the appellant. **Abiyat and others (rights of appeal) Iran** [2011] UKUT 00314(IAC)
14. This was an error of law. I set aside the decision but preserve the findings in paragraphs 24, 25, 26, and 27. I note the remarks made by the judge at the close of paragraph 27 but nonetheless the respondent accepted that the appellant had indeed been trafficked.
15. In response to Ms Fijiwala's assertion that there had been further developments since **AM and BM** to which the judge had not had regard and this had affected the assessment of risk on return.
16. Ms Clarke submitted that there was no finding regarding the asylum claim.
17. Ms Clarke submitted that the judge referred to the expert report of Ms Vickers in relation to the appellant's ability to seek protection and this in turn addressed the issues in relation to the IOM. In particular Ms Clarke made the point that the appellant is not going to return voluntarily to Albania and therefore would not be able to take advantage of the IOM assistance. The expert criticised the assistance offered by the IOM and taken as a whole no Tribunal would have come to another conclusion and the decision should not be set aside.
18. Ms Fijiwala stated that the details in regard to the IOM were set out in the reasons for refusal letter and there was a PDF document referred to in the reasons for refusal letter in relation to the shelters and the judge did not consider this. The Vickers report referred to societal pressures and this was insufficient. In essence, the judge had not analysed the evidence before her and why she accepted the Vickers report over the IOM references.

## **Conclusions**

19. Having found an error of law I therefore proceed to remake the decision.

20. The First-tier Tribunal Judge found at paragraph 26 that “the fact remains that the appellant is a single female with a dependent child.” The judge in addition at paragraph 27 stated:
- “The appellant and other siblings were educated to the age of 18, however there appeared to be a retention of older values including arranged marriages for the females in the family. I found the account of the appellant’s family background to be credible and consistent.”
21. The judge proceeded on the basis that the pivotal consideration in the appellant’s asylum claim was the likely treatment of the appellant on her return to Albania.
22. It is important to note that the respondent accepted that the appellant was and had been a victim of trafficking. It was also accepted in the respondent’s reasons for refusal letter that the appellant fell within a particular social group for the purposes of the Refugee Convention. The respondent considered that the appellant could relocate to southern Albania.
23. Applying **AM and BM**:
- a) It is not possible to set out a typical profile of trafficked women from Albania: trafficked women come from all areas of the country and from varied social backgrounds.
  - b) At its worst the psychological damage inflicted on a victim of trafficking can lead to difficulties in reintegrating into Albanian society and has implications on whether or not it is possible for the victim of trafficking, should she fear persecution in her own area, to relocate.
  - c) Much of Albanian society is governed by a strict code of honour which not only means that trafficked women would have very considerable difficulty in reintegrating into their home areas on return but also will affect their ability to relocate internally. Those who have children outside marriage are particularly vulnerable. In extreme cases the close relatives of the trafficked woman may refuse to have the trafficked woman’s child return with her and could force her to abandon the child.
  - d) Those that see themselves outside society, for example, divorced or abandoned women, or others who wish to live abroad, may seek out traffickers in order to facilitate their departure from Albania and their establishment in prostitution abroad. Although such women are not ‘trafficked women’ in the sense that they have not been abducted against their will, there is likely to be considerable violence within the relationships and the psychological affect of that violence may lead to a situation where the pressures which they are under and the lack of freedom they are under means that such women should be treated as trafficked women.
  - e) The Albanian Government and authorities are taking steps to protect trafficked women who return but such steps are not always effective. When considering whether or not there is a sufficiency of protection for a trafficked woman who is to be returned her particular circumstances must be considered. Not all trafficked women returning to Albania will

be unable to access the arrangements and facilities available to enable successful re-integration.

- f) Trafficked women from Albania may well be members of a particular social group on that account alone. Whether they are at risk of persecution on account of such membership and whether they will be able to access sufficiency of protection from the authorities will depend upon their individual circumstances including but not limited to the following: 1) The social status and economic standing of the trafficked woman's family. 2) The level of education of the trafficked woman or her family. 3) The trafficked woman's state of health, particularly her mental health. 4) The presence of an illegitimate child. 5) The area of origin of the trafficked woman's family. 6) The trafficked woman's age."

24. The individual factors in this are that this is a lone woman who has had children outside marriage and **AM and BM** confirms that those women are particularly vulnerable. It was accepted by the judge that there was evidence that this was a family who although liberal in some respects did abide by a strict code of honour and the judge concluded that there was a risk that the appellant would indeed be ostracised by her family.
25. There was also a reference to women who, albeit not abducted against their will, because of the psychological effects that may lead to a situation where the women are under pressure such that they effectively lack freedom and should be treated as trafficked. Thus although the judge found less consistent the account given in relation to the travel arrangements made with the ex-boyfriend and the fact that she was prepared to travel to the United Kingdom in the boot of a car I do not consider that this means that the appellant was willingly accompanying her traffickers. Indeed there was an acceptance as I state that she was trafficked.
26. The critical question is whether there is sufficiency of protection for a trafficked woman, who is to be returned and her particular circumstances must be considered. Those circumstances should, however, be considered in the context of the available assistance in Albania. Ms Fijiwala did not contend that the country guidance of **AM and BM** was no longer extant and as the appellant is found to be a member of a particular social group the relevant question as to whether she can be granted asylum rests on the country conditions should she return to Albania.
27. Information was extracted from the Country Information and Guidance Albania: Trafficking dated 19<sup>th</sup> September 2014. The question asked at 1.1.7 was whether those at risk were able to seek effective protection and at 1.1.8 it was acknowledged that whilst the Albanian government and authorities had taken steps to protect trafficked women who return such steps had not always been fully effective.
28. It was acknowledged at 1.1.9 that since 2010 the government had made significant efforts to fight human trafficking and created "legislative,

organisational and operational frameworks in the areas of investigation, prosecution, protection and prevention”.

29. For example, in 2013 the criminal code was amended to strengthen its anti-trafficking provisions, there was training given to regional anti-trafficking agencies and the anti-trafficking protection efforts were said to be undertaken “by increasing identification and referral of trafficking victims to appropriate services”.
30. Of particular relevance is 1.1.12:

“The government has also increased anti-trafficking protection efforts by increasing identification and referral of trafficking victims to appropriate services, and by providing financial assistance to victims.”
31. In particular 1.1.13 stated that “there are a number of non-governmental organisations in Albania who are active in trafficking issues and can potentially assist the person to avail themselves of the protection of the state.” However, those references confirm that there is only one state-run shelter for victims of trafficking and only three shelters operated by NGOs albeit that they offer a comprehensive service including psychological care, legal assistance, medical care, reintegration services and assistance for victims’ children. There is also a reference to being able to ‘potentially assist’ which is not the same as confirmation of assistance.
32. In particular, and here is the question which Ms Fijiwala stated was not addressed by the judge at all was that with effect from 1<sup>st</sup> November 2013 the IOM International Organisation for Migration on behalf of the Home Office had established a dedicated assistance package for victims of trafficking voluntarily returning from the UK to Albania including those with children and at 1.1.14 it is stated:

“It has been designed explicitly to help them resettle and reintegrate in a humane and sustainable way to mitigate the risk of re-trafficking or related ill-treatment. Any victim who chooses to return would be subject to a pre-departure and post-arrival assessment to ensure that return was both appropriate and sustainable. They will be met at the airport by state Social Services and normally transferred to the secure National Reception Centre for Victims of Trafficking, guarded by special police 24/7. The centre offers onsite accommodation, health, psycho-social, legal and rehabilitation assistance for victims (and their children). This is a state facility but advised by the International Organisation for Migration and funded in part by UNICEF and the Austrian Development Cooperation.”
33. There was, however, little more information that was given in the Country of Origin Information Report. In particular there was no confirmation as to the permanence or otherwise of the accommodation offered by that one centre, how long a person with a child could stay in the centre or information about conditions after leaving.
34. There was a report of Dr Eileen Walsh, clinical psychologist, and she recorded the vulnerability of the appellant and diagnosed that she had PTSD with “a pre-existing vulnerability due to her adverse childhood that

makes the psychological consequences of the trafficking more difficult to manage” (71).

35. She added at paragraph 77:

“Ms BK’s mental health is unlikely to improve, and is highly likely to deteriorate should she not have stability and a high level of support. Her symptoms are already severe and are at least partly maintained due to her fears about the future. Without adequate support Ms BK is likely to experience deterioration in her mental health. She requires a stable, secure environment where she feels safe in order begin to recover for the effects of her experiences and to continue to provide adequate parenting to her daughter.”

Dr Walsh considered that in her clinical experience treatment would “not be possible if the person had significant fear for their safety and that of their child”. She detailed that the appellant was highly fearful of her family or others who know them finding out about her experiences. And she added “she is also frightened of her trafficker or any associates of his finding her and harming her or her daughter”. In summary she considered that the removal process would lead to significant psychological harm to Ms BK although she denied any current suicidal thoughts. At this point I note that Judge MacKintosh found the appellant’s account to be credible.

36. A further expert report was commissioned from Miranda Vickers, who styles herself as “an internationally renowned expert and specialist on Albanian affairs”. Although she predominantly presents as a historian I note that she is also an adviser to international bodies including the British Foreign Office, the Council of Europe and the International Crisis Group and would appear to have knowledge of the region and had visited Albania as recently as October 2014. I was also concerned that she may stray from her professional remit as she proceeded to comment on the appellant’s trauma from her experience. She considered that the appellant would not wish to go voluntarily and therefore would not qualify for the IOM assistance. I am not prepared to accept that just because the appellant would not make herself voluntarily available for relocation that she would not be offered the package of assistance on return. There was no evidence put before me to the effect that the IOM would refuse to assist this appellant.

37. However, Ms Vickers specifically addressed the remit of the IOM project and identified that the IOM does not have any shelters itself in Albania for victims of trafficking. She confirmed at page 8 of her report

“There is an IOM office located in Tirana, which works with local NGOs and government partners to deliver assistance to return trafficking victims. The National Coalition of Anti-Trafficking Shelters in Albania coordinates the country’s shelters. This includes both government and civil society service providers as part of the national referral mechanism for the identification and assistance of victims of trafficking.”

38. Ms Vickers continues that:



“Because IOM does not have its own shelters it is up to the local Social Services and the NRM to determine how long a person can remain in a shelter. Due to the acute shortage of such shelters, persons over the age of 18 years have to move on from the shelters into either state-run hostels or private accommodation.”

39. She added that *“as of December 2014 IOM has assisted only two victims who have voluntarily returned from the UK.”*
40. Much of the Country Information and Guidance on Albania: Trafficking relates to the prosecution of offenders and the appellant maintained that she was particularly afraid of this as she did not wish to attract attention to herself.
41. Ms Vickers states that for other NGOs to try and find accommodation for victims was not sustainable as they were severely understaffed and funding was not only limited but unpredictable and in short there were simply not enough shelters. In the absence of detailed information on this point I accept the report of Ms Vickers.
42. With regards relocation, as Ms Vickers stated within her report:

“A major barrier to the internal migration is a person’s religious and cultural background. It would be very difficult for someone from the appellant’s northern Muslim religion to relocate to towns in southern Albania with its vastly different cultural, historical and religious background. Due to the small size of Albania and the development of very localised migrant suburbs in its towns and cities I believe it would be extremely difficult for the appellant to find shelter or set up home in any Albanian town and remain anonymous. If she returned to any town in northern or central Albania she would easily be located because she will encounter people from her own district of Librazhd.”
43. The Country of Origin Information Report set out at 2.6 a report by the U.S. Department of State, Trafficking in Persons Report 2014:

“The government increased anti-trafficking protection efforts by increasing identification and referral of trafficking victims to appropriate services, and by providing financial assistance to victims during the reporting period; however, bureaucratic hurdles prevented victims from accessing free healthcare that had previously been approved by the government. The government did not provide funding to NGO shelters. During the reporting period, the government reported that 95 victims of trafficking were identified in Albania; 92 were identified in 2012. Of these, 55 victims were identified and referred by the government in 2013, compared with 42 victims referred by the government in 2012. A total of 93 victims received care in state-run and NGO shelters; 27 victims were accommodated in the state-run shelter exclusively for trafficking victims. Of the 95 victims identified, 43 were child victims of trafficking. 21 identified victims were subjected to labour trafficking.”
44. It went on to state:

“The state-run shelter received the equivalent of approximately \$182,000 in government funding. It provided limited services.”

45. Taking into account the social state and the economic standing of the trafficked person, this is an appellant from the northern region of Albania, which is a small country, and it is acknowledged in **AM and BM** at 187:

“Albania is a country where there is a real fear that traffickers might well be able to trace those who have escaped from them or indeed those whom they fear might expose them. ... To that should be added the difficulties for a single woman to reintegrate into a society where the family is the principal unit for welfare and mutual support as well as, it appears, the channel through which employment is most often obtained.”

This appellant was from a family from the North with an average level of education but with traditional views as found by the First-tier Tribunal Judge.

46. It is also clear that she has a poor state of mental health and she has the presence of an illegitimate child which will render her more vulnerable, **AM and BM**. She cannot return to her family.

47. Despite the improvement that there have been to the protection efforts which have increased for victims of trafficking in Albania the Country of Origin Information Report at 2.6.7 detailed the USSD TIP Report of 2014 which stated:

“Yet because of the prevalence of engrained corruption in conjunction with cultural familism there appear, so far, to be no alternative forms of societal or state protection and security options available to trafficked persons after their return to Albania - other than family reintegration. This is seen by all Albanian stakeholders in the anti-trafficking fight, as well as by the women themselves, as the only long-term option apart from remarriage or success in the asylum system.”

48. On this basis I find that the appellant is a member of a particular social group who is at risk of persecution on account of that membership and that with her particular circumstances, she will be unable to access sufficiency of protection from the authorities.

### **Notice of Decision**

I therefore allow the appeal on asylum grounds.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 6<sup>th</sup> August 2015

Deputy Upper Tribunal Judge Rimington

**TO THE RESPONDENT**  
**FEE AWARD**

No fee is paid or payable and therefore there can be no fee award.

Signed

Date 6<sup>th</sup> August 2015

Deputy Upper Tribunal Judge Rimington